SB CIVIL MISC. APPEAL NO. 838/1995.
(SHIKHAR CHAND JAIN & ORS. v SEEMLA & ORS.)

HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER: 21.8.06

Mr. Dinesh Kala for the appellant.
Mr. Tanvir Ahmed for the respondents.

The death of Ajeet Kumar on 10.10.89, an award of only Rs. 2,46,600/- has prompted his parents, his widowed wife, his four children, to file this appeal for enhancement of the compensation. They have challenged the award dated 24.5.95, passed by the Motor Accident Claims Tribunal, Jaipur District, Jaipur on the ground that the compensation awarded is too little.

The brief facts of the case are that on 10.10.89, in the afternoon, while Ajeet Kumar was coming to Jaipur on his Motorcycle, a bus, driven by respondent No.1 in a rash and negligent manner, hit the motorcycle and ran over Ajeet Kumar. Consequently the young man died on the spot. His parents, his widowed wife and his children, who were minor at that time, filed a claim petition for compensation amount of Rs. 54,86,000/-. After the service of the summons neither the owner nor the driver appeared before the Tribunal. Hence, ex-parte order was passed against respondents No.

1 and 2. The Insurance Company, the respondent No.3 denied the averments made in the claim petition and contended that the driver of the bus did not have a valid licence. The claimants on their part examined three witnesses and submitted twelve documents. The Insurance Company neither examined any witness, nor submitted any document on its behalf. After considering the oral and documentary evidence, the learned Tribunal awarded a compensation as aforementioned. Since the claimants are still aggrieved by the measly compensation they have filed this appeal before this Court.

Mr. Dinesh Kala, the learned counsel for the appellant, has vehemently argued that although the Second Schedule attached to the Motor Vehicle Act, 1988 (henceforth to be referred to as ' the Act' for short) did not come into force till 1994. But, according to the Hon'ble Supreme Court, the formula laid down in the Second Schedule can certainly be used as a guideline for assessing the compensation to be paid to the claimants. According to him, Ajeet Kumar was a businessman who had two shops, one shop for selling books and stationary and another for selling fertilisers. He was a young man of 26 years old. Hence, according to the Schedule a

multiplier of 18 should have been applied whereas multiplier of only 12 has been applied by the learned Tribunal. Moreover, Ajeet kumar had two licences from the Secondary Education Board and another licence from “Pathya Pustak Mandal” for Dausa. Because of these licences he had one shop where he was selling books and stationary material. In his second shop he was selling fertilisers and seeds and insecticides. According to the AD-1 Shikhar Chand Jain, he was earning about Rs. 4,000/- per month. According to the learned counsel, the learned Tribunal has not considered the loss of future prospects of income. Considering the fact that the deceased was a young man, who was established in the business for a long time, considering the fact that he would have made more profits in the coming years, the loss of future prospects should have been considered by the learned Tribunal. Lastly he has argued that the assessment of his income as merely Rs. 2,100/- per month is too low for a businessman who was running two shops. Therefore, the statement of the witnesses, namely of the father, AD-1, and of his wife AD-4, Beena Devi, should have been relied upon to assess his income. In order to support his contentions, the learned counsel has relied upon the case of Supe Dei & Ors. Vs. National Insurance Co.

Ltd. & Anr. (2002 ACJ 1166 9SC), General Manager, Kerala State Road Transport Corporation, Vs. Mrs. Susamma Thomas & Ors. (AIR 1994 SC 1631), S. Kaushnuma Begum & Ors. Vs. The New India Assurance Co. Ltd. & Ors. (AIR 2001 SC 485) and Delhi Transport Corporation Vs. Deep Kanta & Ors. (2003 ACJ 1369).

Mr. Tanveer Ahmed, the learned counsel for the Insurance Company, on the other hand, has argued that under the Act the Tribunal is required to grant a reasonable compensation to the claimants. Considering the fact that the accident had taken place in the year 1989, the compensation awarded is more than reasonable. Hence he has supported the award.

We have heard both the learned counsels and have perused the impugned award.

The Hon'ble Supreme Court in the case of Supe Dei (supra) held that the Second Schedule attached to the Act can be taken as a guideline. Considering the fact that the impugned order was passed in the year 1995, by when the Second Schedule had been incorporated in the Act, therefore, the learned Tribunal should have taken the Second Schedule as a guideline while assessing the

compensation. According to the guideline, a multiplier of 18 should have been used whereas the learned Tribunal has merely applied a multiplier of 12. It has not given any cogent reason for the choice of the multiplier. Hence, this Court is of the opinion that the multiplier of 18 should have been applied.

Undeniably, the economic condition of the country, has been improving every year. Thus, while calculating the loss of income, the learned Tribunal should have also considered the loss of future prospect of the income. This view also finds support from the case of Susamma Thomas & Ors (supra) where the Hon'ble Supreme Court has held that the loss of future prospect of income is one of the factors to be considered while assessing the compensation. Since the deceased was a businessman running two shops at Bassi, a rural area, his profiting from the sale of fertilisers insecticides and seeds would have certainly increased. With the growth of education in the rural areas, even the shop of stationary and books would have earned a handsome profit. Considering these factors, the future loss of income has to be assessed for the benefit of the claimants.

Both, according to the father and wife, the deceased was

earning Rs. 4,000/- per month from his business. According to the wife he was earning Rs. 3,000/-. There is no reason to doubt their statement. Therefore, even if a conservative statement is done, his income should have been taken as Rs. 3,000/- per month. Deducting one-third from the said income, the deceased would have spent Rs. 2,000/- on his family. Therefore, under the category of loss of income, the calculation should have been 2000x18x12= 4,32,000/-. Considering loss of his future prospects this Court is further inclined to pay a compensation of Rs. 50,000/-. Hence the total amount is enhanced to Rs. 4,82,000. The Insurance Company is further directed to pay a interest @ 9%. Considering the fact that the interest rate in the year 1995 was high and at present is 6%, by way of via media the Insurance Company is directed to pay interest @ 9% per annum on the enhanced amount. The respondent No.3 is further directed to pay the amount within a period of two months from the date of receipt of certified copy of this order. The Tribunal is directed to disburse the same after issuing notice to the claimants within a period of one month thereafter. Hence this appeal is allowed as indicated above.

(R.S. CHAUHAN)J.

MRG.